IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

CRL.A.No. 867 of 2006(C)

SC.472 of 2001 of ADDL.SESSIONS COURT-TRIAL OF ABKARI ACT CASES,NEYYATTINKARA

CP.301/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II,NEYYATTINKARA

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APPELLANT/ACCUSED:

THOMAS, S/O. GOVINDAN,
C.NO.361, CENTRAL PRISON,
TRIVANDRUM-12.

BY ADV. SMT..BINDHU SREEKUMAR(STATE BRIEF)

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REP. BY A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI. C.M. NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 867 OF 2006

Dated this the 12th day of December, 2006

JUDGMENT

The appellant is the accused in Sessions Case No.472 of 2001 on the file of the Additional Sessions Court for trial of Abkari Act Cases, Neyyattinkara. He faced trial for the offence punishable under Section 58 of the Abkari Act.

2. The prosecution case against the appellant was that on 24.1.2000 at about 1.45 P.M. while PWs.2 and 3 were on patrol duty, they found the appellant carrying a 5 litre black jerry can containing 3 litres of arrack without sufficient documents to possess the same. After seizure of the contraband article, the appellant was arrested and a case was registered against him. To prove the prosecution case, the prosecution examined PWs.1 to 4 and produced Exts.P1 to P6 as well as MO.1 can. No oral or documentary evidence was adduced on the side of the defence. On closing the prosecution evidence, the appellant was questioned under Section 313 Cr.P.C. and he denied the allegations levelled against him. However, the trial court relying on the oral and documentary evidence adduced by the prosecution found the appellant guilty under Section 58 of the Abkari Act,

convicted him thereunder and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to undergo rigorous imprisonment for a further period of three months. The above conviction and sentence are challenged in this appeal.

3. Since the appeal is filed through the jail authorities and the appellant is not defended by a counsel of his choice, a State Brief has been appointed to defend his case. This Court heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor.

4. Learned counsel appearing for the appellant submits that the trial court committed serious error in placing reliance on the evidence of the prosecution witnesses. Counsel further submits that even accepting the evidence of the prosecution witnesses, it is not possible to hold that the appellant committed any offence as alleged by the prosecution as there is no evidence to show that samples were taken from the contraband article alleged to have been seized from the appellant and sent for chemical analysis.

5. PW.3 was the Sub Inspector of Police who was on patrol duty on

the date of occurrence. He deposed before the court below that he saw the appellant carrying a plastic cover and on seeing the police party, the appellant tried to escape. PW.3 further deposed that he stopped the appellant and on questioning him it was revealed that the plastic cover contained a 5 litre can containing 3 litres of arrack. He further stated that he seized the contraband article on preparing Ext.P1 mahazar and arrested the appellant on the spot and produced the appellant along with the contraband article before the court of the Judicial Magistrate of the First Class II, Neyyattinkara on the same day. Subsequently, PW.3 completed the investigation and filed the final charge sheet. The evidence of PW.3 is supported by PW.2 who had accompanied PW.3 on patrol duty. PW.1 is an independent witness who had attested Ext.P1 mahazar prepared by PW.3. PW.4, the Thondi Section Clerk attached to the Judicial First Class Magistrate's Court II, Neyyattinkara was examined to prove sampling of the liquid found in MO.1 can and forwarding of the same for chemical analysis. Ext.P5 is the chemical analysis report. On accepting the above evidence, the trial court found that the prosecution succeeded in proving that the appellant was found in possession of 3 litres of arrack in MO.1 can on the day of the incident.

6. Learned counsel appearing for the appellant submits that Ext.P6,

which is the extract of Thondy Register of Judicial First Class Magistrate's Court II, Neyyattinkara, does not show that sample was taken by PW.3 after detection of the crime and seizure of MO.1 can and that neither PW.3 nor PW.2 had stated before the court below that they had taken any sample from the contraband article seized from the appellant. Counsel further submits that Ext.P6 is only a photostat copy of the extract certified by the learned Magistrate and that the original has not been produced. In this context, this Court considered the evidence of PW.4 who had stated before the court below that he had received a plastic cover and MO.1 can containing 3 litres of arrack. PW.4 also stated that Ext.P6 would show that sample was taken from the contraband article seized from the appellant and sent for chemical analysis. In the above circumstances, this Court is of the view that the trial court rightly relied on the evidence adduced by the prosecution to find the appellant guilty of the offence alleged against him and the findings entered by the trial court require no interference.

7. Learned counsel for the appellant now submits that the sentence awarded by the court below is excessive. The trial court had already considered this aspect and found that as per the provisions of the Abkari Act, a person who commits an offence under Section 58 of the Abkari

Act is punishable with imprisonment for a term which may extend to ten years and with fine which shall not be less than rupees one lakh. The sentence awarded against the appellant is rigorous imprisonment for a period of two years and to pay a fine of Rs.1,00,000/- which is in accordance with the provisions of the Abkari Act. In the above circumstances, this Court is the view that the sentence passed against the appellant is not excessive.

8. The Crl. Appeal is accordingly dismissed, confirming the conviction and sentence passed by the court below.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.APPEAL NO.867/06

JUDGMENT

12TH DECEMBER, 2006